

Michigan Department of Civil Service

# REGULATION

<b>Appointing Authority Letter Reference:</b>  <u>CS-6930 CS-6938</u>	<b>Effective Date:</b>  <del>October 29, 2000</del> <u>March 18, 2001</u>	<b>Index Reference:</b>  Technical Complaints	<b>Regulation Number:</b>  <b>8.02</b>
<b>Issuing Bureau:</b>  Office of Technical Complaints	<b>Rule Reference:</b>  Rules 4-2 (Position Classification Review), 4-3 (Appeals), 8-3 (Technical Complaints), and 8-4 (Summary Dismissal of Grievance Appeal or Technical Complaint)		<b>Replaces:</b>  Reg. 2.03 ( <del>CS-6858, Aug. 11, 1997 &amp;</del> <u>CS-6930, Oct. 29, 2000</u> )
<b>Subject:</b>  <b>TECHNICAL CLASSIFICATION AND QUALIFICATION COMPLAINTS</b>			

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## 1. PURPOSE

This regulation establishes standards and procedures for filing and processing technical classification and qualification complaints, as authorized in Rules 4-3 and 8-3.

## 2. CIVIL SERVICE COMMISSION RULE REFERENCE

***Rules 4-2 Position Classification Review*** — *The department of civil service shall provide for both a periodic and ongoing review of positions in the classified service to ensure positions continue to be properly classified.*

- (a) ***Position review.*** *An appointing authority shall give notice to the department of civil service of material changes in the duties and responsibilities that may impact the proper classification of a position. If the appointing authority does not notify the department of civil service of material changes, the employee occupying the position may*

*initiate a position review by filing an updated position description and a written request with the department of civil service.*

- (b) Frequency of review.** *The classification of an occupied position may be reviewed once in any 12-month period, unless otherwise approved by the state personnel director. When a significant, substantial, or material change has occurred in the duties and responsibilities, the department of civil service may require the appointing authority to establish a new position that is properly classified. The classification of a position or appointment of an employee to a position constitutes a position review for the purposes of this rule.*
- (c) Effective date of change.** *A change in the classification of a position based on a review under this rule is on a current basis, except as otherwise approved by the state personnel director.*
- (d) Preauthorized review.** *An appointing authority may reclassify a position in accordance with regulations governing preauthorized positions.*

**Rule 4-3 Appeals** — *Only the appointing authority may appeal the classification of a newly established position. Either the appointing authority or an adversely affected employee may appeal a change in the classification or classification level of a previously established position through authorized technical appeal procedures.*

### **Rule 8-3 Technical Complaints**

**8-3.1 Complaint Regarding Technical Decision Authorized** — *An authorized individual, appointing authority, or organization may file a technical complaint with the department of civil service, as provided in this rule and the regulations.*

- (a) Technical classification complaint.** *An employee directly affected by a technical classification decision, or the employee's appointing authority, may file a technical classification complaint.*
- (b) Technical qualification complaint.** *An employee directly affected by a technical qualification decision, or the employee's appointing authority, may file a technical qualification complaint.*

\* \* \*

### **8-3.2 Time Limits**

\* \* \*

- (b) **Other technical complaints.** *A technical classification complaint, technical qualification complaint, or technical disbursement complaint must be filed within 14 calendar days after the date the civil service staff issued the original technical decision.*

### **8-3.3 Civil Service Technical Review**

- (a) **Referral to technical review officer.** *If the technical complaint is not administratively dismissed under rule 8-4 [Summary Dismissal], a technical review officer shall conduct an expeditious review in accordance with the civil service rules and regulations.*

- (b) **Technical review procedures.**

- (1) **Hearing not authorized.** *A technical review officer is not authorized to conduct a hearing.*

\* \* \*

- (3) **Technical review decision.** *At the conclusion of the technical review, the technical review officer shall issue a final technical review decision setting forth the review officer's material findings of fact, conclusions of law, and remedial orders, if any. The final technical review decision shall be based on (1) the technical expertise of the review officer, (2) the civil service rules and regulations, (3) departmental records, and (4) the documents and written submissions of the parties. In a review of a technical appointment complaint, the technical review officer shall also consider the written recommendation of the hearing officer on any certified question of fact.*

**8-3.4 Further Appeal to Commission Authorized** — *An interested party in a technical review proceeding may file an appeal of a final technical review decision,*

*including a summary dismissal of the technical complaint, to the civil service commission, as provided in the civil service rules and regulations.*

#### **8-3.5 Effective Date of Decision of Technical Review Officer**

- (a) **Technical classification or qualification review.** *A final technical review decision on a technical classification or qualification complaint is effective immediately upon issuance, unless a different effective date is specified in the decision.*

\* \* \*

**Rule 8-4 Summary Dismissal of Grievance Appeal or Technical Complaint** —  
*A civil service adjudicating officer may summarily dismiss a grievance appeal or technical complaint for any of the following reasons:*

- (a) **Not authorized.** *The grievant or technical complainant is not authorized to file the grievance, grievance appeal, or technical complaint.*
- (b) **Lack of jurisdiction.** *The department of civil service lacks jurisdiction over a necessary party or over the subject matter of the grievance appeal or technical complaint.*
- (c) **Untimeliness.** *The grievance, grievance appeal, or technical complaint was not filed timely.*
- (d) **Another action pending.** *Another civil service action has been initiated between the same parties involving substantially the same grievance or technical complaint.*
- (e) **Barred by prior claim.** *Substantially the same grievance or technical complaint was adjudicated to finality in another action between the same parties.*

### **3. DEFINITIONS**

#### **A. Civil Service Commission Rule Definitions**

1. **Adjudicating officer** means the state personnel director or other civil service administrative officer, technical review officer, hearing officer, arbitrator, or other officer authorized to make a decision reviewable by the civil service commission.
2. **Department** means the department of civil service.
3. **Good cause** means an acceptable excuse for failing to file or take other required action timely. Good cause does not include a person's own carelessness, negligence, or inattention to the filing or other requirements.
4. **Interested party** means a party that filed a technical complaint or a written appearance in the technical complaint review proceeding.
5. **Party** means any of the following:
  - (a) An employee whose classification is directly affected by a technical classification decision or whose qualifications and fitness for a position in the classified service is directly affected by a technical qualification decision.
  - (b) The appointing authority of an employee in subdivision (a).
  - (c) Any other interested person with a demonstrable special interest in the technical ... decision that is granted permission to participate in the review.
6. **Technical complainant** means any of the following persons when directly affected and aggrieved by a technical decision:
  - (a) An applicant for employment.
  - (b) A classified employee.
  - (c) An appointing authority.
  - (d) The office of the state employer.
  - (e) Any other person or organization specifically authorized by civil service rule or regulation to file a technical complaint.

7. **Technical complaint** means a written complaint that a technical decision (1) violated article 11, section 5, of the Michigan constitution, (2) violated a civil service rule or regulation, or (3) was arbitrary and capricious.
8. **Technical decision** means a civil service staff decision (1) classifying a position in the classified service or (2) determining the qualifications and fitness of a candidate for a position in the classified service.

#### 4. **STANDARDS**

##### A. **Filing of Complaints**

1. An employee or appointing authority directly affected by a technical decision made by the Bureau of Human Resource Services may file a technical complaint with the Department of Civil Service, Office of Technical Complaints. The complaint must be submitted using the appropriate form – either the Technical Classification Complaint form (CS-212a) or the Technical Qualification Complaint form (CS-212b). A complainant must simultaneously file a copy of the complaint with the appointing authority for which a complainant works and file a proof of such service with the Office of Technical Complaints.
  - a. An employee organization cannot file a complaint regarding a technical decision. An employee organization is limited to serving as representative for the complainant.
  - b. A complaint for a position in a preauthorized classification is accepted only if the Department of Civil Service has made a technical decision. If an appointing authority denies a preauthorized reclassification, the incumbent must first file a request for a position review with the Department of Civil Service, in accordance with Regulation 4.09, Employee Generated Position Reviews.
  - c. Disputes concerning the evaluation of an incumbent's work performance are not subject to technical complaints, but may be a subject for grievance, in accordance with Regulation 8.01, Grievances and Grievance Appeals Procedures for Employees

in the State Civil Service, or the appropriate bargaining unit grievance procedure.

- d. Class action suits are not permitted. Incumbents in the same classification may jointly file a group complaint of a denied or modified classification action. The incumbents must be performing the same duties and responsibilities and must have occupied their positions for the equivalent of one-year of full time service. Only incumbents who sign the technical complaint form (CS-212a or CS-212-b) are considered complainants.

**2. Complaint.** The complaint must include the following:

- a. All information required in Part A of the technical complaint form (CS-212a or CS-212b) for each complainant.
- b. A clear and concise description of the technical decision being questioned.
- c. A complete statement of why the technical decision (1) violated Article 11, Section 5 of the Michigan Constitution; (2) violated a Civil Service rule or regulation; or (3) was arbitrary and capricious.
- d. Any documentary evidence that the complainant believes supports the technical complaint.
- e. A clear statement of the desired outcome of the complaint. The outcome must be within the authority of the Department of Civil Service to grant.
- f. The signature of each complainant.
- g. The name, mailing and email address of the complainant's representative, if any.

**3. Time Limitations for Filing Technical Complaints.** To be timely, the complaint must be received by the Department of Civil Service within 14 calendar days after the mailing date of the technical decision.

4. **Extension for Filing.** Upon the filing of an explanation of good cause with the Office of Technical Complaints before the expiration of the required time for filing, the technical review officer may grant an extension of time for filing.

**B. Administrative Denial of Complaint**

1. **Reasons for Administrative Denial.** In accordance with rule 8-4, a technical classification or qualification complaint may be administratively dismissed without prior notice for any of the following reasons:
  - a. The complaint fails to set forth allegations with sufficient particularity to permit review.
  - b. The complaint involves one or more of the following actions, decisions, and matters that are not subject to review:
    - (1) Michigan Civil Service Commission Rules.
    - (2) Department of Civil Service regulations, standards, and procedures.
    - (3) The official classification plan, including classification specifications, job-evaluation factors, and the policies, procedures, and other official publications for administration of the classification system.
    - (4) The establishment, abolishment, or modification of a classification.
    - (5) The job evaluation factoring for a classification.
    - (6) The pay range assigned to a classification.
    - (7) Classifications preauthorized for position establishment and reclassification to agencies.
    - (8) Individual position freezes.



- (9) Appraisal method and content.
  - (10) Appraisal determination, including section/item weights, passing points, and experience and education rating charts.
  - (11) Appraisal method administration decisions, including the following:
    - (a) Replacing or combining applicant pools.
    - (b) Scheduling examinations and filing requirements.
    - (c) Limitations on appraisal participation.
- c. The complaint fails for other good and sufficient reason to warrant further review.

## **C. Technical Review Decisions**

1. **Complaint Investigation.** A technical review officer is not authorized to conduct a hearing, but may meet with the complainant or other interested parties to discuss the complaint.
2. **Decisions**
  - a. The technical review officer shall review all submissions and decide the matter based on the submissions, departmental records, civil service rules and regulations, and technical expertise. If the officer finds that the technical decision violated Article 11, Section 5 of the Michigan Constitution, violated a Civil Service rule or regulation, or was arbitrary and capricious, the officer shall issue a written determination ordering the proper resolution of the complaint. If the officer finds no such violation, the director shall issue a written determination denying the complaint for lack of merit.
  - b. The decision of a technical review officer shall contain notice of the right of interested parties to file an application for leave to appeal to the Civil Service Commission, as provided in

<del>October 29, 2000</del> <u>March 18, 2000</u>	<b>Reg. 8.02: Technical Classification and Qualification Complaints</b>	Page 10 of 12
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Regulation 8.05, Employment Relations Board: Appeal Procedures.

#### **D. Implementing Technical Classification Complaint Decisions**

1. **Effective Date of Complaint Decisions.** The effective date assigned to a technical classification complaint decision is the beginning date of the pay period in which the original request for a position review was received. If the appointing authority submitted the request for a position review, the effective date is assigned in accordance with Regulation 4.04, Effective Dates for Classification Actions. If the employee submitted the position review request, the effective date is assigned in accordance with Regulation 4.09, Employee Generated Position Reviews.
2. **Parties Granted Relief.** Only complainants listed on the Request for Technical Complaint form (CS-212a or CS-212b) may obtain the full relief granted to the complaint, including the effective date of the original position review. Other similarly situated individuals may be granted the same classification relief, but on a prospective basis only.
3. **Effects of Vacating a Position.** If an incumbent vacates a position before completing the complaint process and ultimately prevails, the following processes occur:
  - a. The employee who complained about a classification action receives compensation in the awarded classification retroactive to the effective date of the original position review and up to the date the employee vacated the position.
  - b. The employee has reinstatement rights in the awarded classification, as described in the civil service rules and regulations.
  - c. If the employee vacated the position as a result of a reduction in force, the employee's name is placed on the appropriate recall list for the awarded classification. This does not require the bumping chain to be reinstituted.

- d. The awarded classification is limited to the position that gave rise to the complaint and cannot be transferred to other positions.

- 4. **Effect of Decision on Subsequent Employee.** In a successful complaint, when a new incumbent has been appointed to the position, the position remains at the previous classification until the successor has satisfactorily performed the duties for the equivalent of one-year full time service. The position may be reclassified to the awarded classification sooner if the successor qualifies for an early reclassification in Regulation 4.05, Frequency of Review of Positions.

## **E. Grievance Settlements**

- 1. **Grievance Settlements.** An appointing authority cannot unilaterally settle a classification dispute through a grievance or arbitration covered by a collective bargaining unit contract or the Grievance and Appeal Procedures for Employees in the State Civil Service that may violate the provisions of any civil service rule, regulation, standard, or procedure. Classification actions that cannot be settled in the grievance forum are those listed in Standard 4.B.2. and the following:
  - a. The classification of a position.
  - b. The assignment of an effective date.
  - c. The assignment of position sub-class codes.
  - d. The determination of working-out-of-class assignment when the performed duties and responsibilities are not those of an existing properly classified position.
  - e. Classification complaint decisions or the decisions of the Employment Relations Board and Civil Service Commission.

## 5. **PROCEDURE**

### **Responsibility**

Department of Civil Service

Technical Complainant

Office of Technical Complaints

### **Action**

1. Mails technical decision.
2. Prepares technical complaint and submits to the Office of Technical Complaints, Department of Civil Service.
3. Provides a copy of the technical complaint to the appointing authority.
4. Upon receipt of the technical complaint, conducts preliminary review to determine timeliness and sufficiency of the complaint.
5. If the complaint is untimely or fails to meet the requirements of this regulation, dismisses the technical complaint.

### **Responsibility (cont.)**

Office of Technical Complaints

Complainant or Interested Party

### **Action (cont.)**

6. Obtains submissions from appointing authority and departmental staff, if required.
7. If necessary, meets with the technical complainant and any other interested persons to review and discuss the complaint.
8. Prepares and issues technical complaint decision.
9. May apply for leave to appeal to the Civil Service Commission.

## **CONTACT**

Questions regarding this regulation should be directed to the Office of Technical Complaints, Department of Civil Service, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909, at (517) 335-4970.

**NOTE:** Regulations are issued by the State Personnel Director under authority granted in the State of Michigan *Constitution* and the *Michigan Civil Service Commission Rules*. Regulations that implement Commission Rules are subordinate to those Rules.